

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

THOMAS AND SANDRA HOPKINS, h/w	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
	:	No. 02-CV-3207
	:	
v.	:	
	:	
	:	
HARTFORD FIRE INSURANCE COMPANY	:	
	:	
Defendant.	:	

**PRE-TRIAL MEMORANDUM OF DEFENDANT, HARTFORD FIRE INSURANCE
COMPANY**

**1) BRIEF STATEMENT OF THE NATURE OF THE ACTION AND
JURISDICTION**

Plaintiff has alleged both breach of contract and statutory bad faith pursuant to 42 Pa.C.S.A. §8371 *et seq.* Jurisdiction of this court is based on diversity of citizenship pursuant to 28 U.S.C. 1332.

2) BRIEF STATEMENT OF FACTS

On August 9, 2001, a fire damaged the plaintiffs' property located at 47 Hickory Hills Drive, White Haven, PA 18661. This property was insured under policy number 44 RB 568868 issued by defendant, Hartford Fire Insurance Company (hereinafter "Hartford"). On or about August 10, 2001 the plaintiffs notified defendant Hartford of the fire at their property.

On August 10, 2001 Hartford retained Mark Allen of Crawford & Company to investigate this loss. On August 13, 2001 Mr. Allen met with the plaintiffs' public adjuster, Mr.

Joseph Cola, at plaintiffs' property to conduct an on-site investigation. After this on-site inspection Mr. Allen retained Mr. Alex Profka as a fire cause and origin expert to determine the exact cause of this fire. Mr. Profka inspected the plaintiffs' premises on August 13, 2001. Mr. Profka then recommended to Mr. Allen that an electrical engineer be retained to examine any potential electrical sources of ignition. Mr. Allen retained Clifford B. Patton to conduct this investigation. On August 28, 2001 Mr. Profka and Mr. Patton conducted a second investigation of the plaintiffs' property. As a result of Mr. Patton's investigation he concluded that there was no evidence of an electrical failure providing the ignition and energy for the fire in the closet at the plaintiffs' home.

On September 4, 2001 Mr. Profka took the recorded statement of the plaintiff, Mr. Thomas Hopkins, regarding the circumstances surrounding the fire of August 9, 2001. Based on Mr. Profka's investigation and the conclusions reached by Mr. Patton, Mr. Profka determined that the fire was an intentionally set fire originating in an interior closet area of the house. Mr. Profka's investigation also determined that Mr. Hopkins was seen leaving the property approximately 45 minutes prior to the discovery of the fire.

On February 5, 2002 Hartford took the examination under oath of both Mr. and Mrs. Hopkins. At that examination under oath the Hopkins' produced numerous documents related to their financial condition prior to the fire.

On May 10, 2002 Hartford notified the plaintiffs that their claim for damages arising out of the August 9, 2001 fire at their property was being denied. As the basis for this denial the Hartford cited both the conditions of the policy which void the policy if the insured's intentionally conceal or misrepresent any material fact or circumstance, engage in fraudulent

conduct or make false statements, as well as the exclusion relating to intentional loss caused by an insured.

3) **MONETARY DAMAGES**

Defendant is not claiming any monetary damages.

4) **WITNESSES CALLED BY DEFENDANT**

Liability:

1. Mark Allen, 22 East Union Street, Wilkes Barre, PA 18701, Crawford & Company adjuster for Hartford. Mr. Allen will be called to testify about his adjustment and investigation into the plaintiffs' loss and his interaction with the plaintiff's public adjuster, Mr. Cola.

2. Cindy L. Screen- Claim Representative for Hartford Insurance Company. Ms. Screen will be called to testify about the investigation and denial of plaintiffs' claim.

3. Joe Carlin- SIU Investigator for Hartford Insurance Company. Mr. Carlin will be called to testify about the investigation and denial of plaintiffs' insurance claim.

4. Lynn Salerno- Fraud Investigator for Hartford Insurance Company. Ms. Salerno will testify about the investigation and denial of plaintiffs' insurance claim.

4. Sharon Haines, Pocono Resorts Realty, Route 940, P.O. Box 231, Lake Harmony, PA. Ms. Haines will testify to facts regarding the plaintiffs' listing of their property for sale.

5. Albert Giardina, 47 Hickory Hills Road, White Haven, PA 18661. Mr. Giardina will be called to testify regarding his observations on the day of the fire.

6. Thomas Zoshak, 421 Hemlock Street, Freeland, PA 18224. Mr. Zoshak was the fire chief of the Fearnot Volunteer Fire Department and will testify about observations made upon the fire company's arrival at the plaintiffs' property and his subsequent investigation.

7. Joseph Cola. Plaintiffs' original public adjuster who will be called to testify regarding estimates he prepared for property damages and the contents of the plaintiffs' property.

Expert:

1. Alex Profka, Beiber & Associates, P.O. Box 3745, Scranton, PA 18505. Mr. Profka is a fire cause and origin expert who will testify regarding his investigation of and opinions regarding the cause and origin of the fire at plaintiffs' property.

2. Nelson Evans, First General Services, Mr. Evans will testify regarding his preparation of an estimate regarding the damages to plaintiffs' property. [damage witness].

3. Brad Ryden, Matson Driscoll & D'Amico. Mr. Ryden is an accountant and will testify regarding the plaintiffs' financial condition prior to the August 9, 2001 fire at their property.

4. Trooper Daniel Balliet, Pennsylvania State Police. Trooper Balliet will be called to testify regarding his investigation of the cause and origin of the fire.

5) **EXHIBITS**

1.	EUO transcript of S. Hopkins dated 2/5/02	S. Hopkins #1 (2/21/03)
2.	Commerce Bank statements for 1999 – 2001	S. Hopkins #2 (2/21/03)
3.	AT&T Universal Card statements for 1999 – 2001	S. Hopkins #3 (2/21/03)
4.	New York & Company credit card statements for 2001	S. Hopkins #4 (2/21/03)
5.	Discover Card statements for 2001	S. Hopkins #5 (2/21/03)
6.	Capital One Mastercard statements for 2000 and 2001	S. Hopkins #6 (2/21/03)
7.	First USA VISA statements for 1999 – 2001	S. Hopkins #7 (2/21/03)
8.	Various letters re: confirmation of transactions and lack of payment	S. Hopkins #8 (2/21/03)
9.	GE Select credit card statements for 1999 – 2001	S. Hopkins #9 (2/21/03)
10.	Chase VISA credit card statements 1999 – 2001	S. Hopkins #10 (2/21/03)
11.	Deed for property – 2453 Eldon Avenue, Drexel Hill, PA	S. Hopkins #11 (2/21/03)
12.	Sketch of layout of house – 2453 Eldon Avenue, Drexel Hill, PA	S. Hopkins #12 (2/21/03)

13.	Inventory of contents	S. Hopkins #13 (2/21/03)
14.	Letter dated 10/17/01 from The Hartford to Mr. & Mrs. Hopkins re: response to claim	S. Hopkins #14 (2/21/03)
15.	Letter dated 10/25/01 from Mr. & Mrs. Hopkins to The Hartford	S. Hopkins #15 (2/21/03)
16.	Letter dated 10/30/01 from The Hartford to Mr. & Mrs. Hopkins	S. Hopkins #16 (2/21/03)
17.	Letter dated 11/8/01 from The Hartford to Mr. & Mrs. Hopkins	S. Hopkins #17 (2/21/03)
18.	Letter dated 11/9/01 from The Hartford to Mr. & Mrs. Hopkins	S. Hopkins #18 (2/21/03)
19.	Letter dated 11/3/01 from Mr. & Mrs. Hopkins to The Hartford	S. Hopkins #19 (2/21/03)
20.	Letter dated 12/10/01 from The Hartford to Mr. & Mrs. Hopkins	S. Hopkins #20 (2/21/03)
21.	Letter dated 1/9/02 from The Hartford to R. Ponaino	S. Hopkins #21 (2/21/03)
22.	Letter dated 2/13/02 from The Hartford to Mr. & Mrs. Hopkins	S. Hopkins #22 (2/21/03)
23.	Letter dated 3/8/02 from The Hartford to Mr. & Mrs. Hopkins	S. Hopkins #23 (2/21/03)
24.	Letter dated 4/18/02 from The Hartford to Mr. & Mrs. Hopkins	S. Hopkins #24 (2/21/03)
25.	Letter dated 11/21/01 from J. Deisher to Mr. & Mrs. Hopkins	S. Hopkins #25 (2/21/03)
26.	Letter dated 10/31/01 from J. Deisher to J. Cola, Novick Adjustment Company	S. Hopkins #26 (2/21/03)
27.	Letter dated 11/1/01 from J. Deisher to J. Cola, Novick Adjustment Company	S. Hopkins #27 (2/21/03)
28.	Letter dated 11/26/01 from J. Deisher to Mr. & Mrs. Hopkins	S. Hopkins #28 (2/21/03)
29.	Letter dated 5/10/02 from The Hartford to Mr. & Mrs. Hopkins	S. Hopkins #29 (2/21/03)
30.	Check register printout	S. Hopkins #30 (2/21/03)

31.	Copies of cancelled checks	S. Hopkins #31 (2/21/03)
32.	First Union credit card statements, June through August 2001	S. Hopkins #32 (2/21/03)
33.	Credit card statements, November through December 2000 and June 2001	S. Hopkins #33 (2/21/03)
34.	Mary Kay, Inc. check stubs	S. Hopkins #34 (2/21/03)
35.	The Hartford Homeowners Insurance Policy (H 321 – H 371)	S. Hopkins #35 (2/21/03)
36.	Sovereign Bank statements – December 1998 through September 2001	T. Hopkins #1 (2/21/03)
37.	MBNA credit card statements – account no. 5329 0190 2815 0921	T. Hopkins #2 (2/21/03)
38.	MBNA credit card statements – account no. 5329 0009 2521 7013	T. Hopkins #3 (2/21/03)
39.	T. Hopkins EUO transcript dated 2/5/02	T. Hopkins #4 (2/21/03)
40.	Crawford & Company Statement of Loss and First Report dated 8/15/01	M. Allen #1 (3/10/03)
41.	Fax cover sheet dated 8/28/01 from C. Screen to M. Allen attaching property inspection form	M. Allen #2 (3/10/03)
42.	Crawford & Company Second Report dated 8/28/01	M. Allen #3 (3/10/03)
43.	Fax cover sheet dated 9/4/01 from M. Allen to C. Screen attaching revised estimate	M. Allen #4 (3/10/03)
44.	Fax cover sheet dated 11/19/02 from N. Evans to M. Allen attaching statement letter, estimate and invoice	M. Allen #5 (3/10/03)
45.	Crawford & Company Fourth Report dated 11/21/01	M. Allen #6 (3/10/03)
46.	G. Mehmel CV and Hopkins estimate	M. Allen #7 (3/10/03)
47.	Crawford & Company Third Report dated 9/21/01	M. Allen #8 (3/10/03)
48.	Photocopies of photographs	A. Profka #1 (3/10/03)

49.	Photocopies of photographs	A. Profka #2 (3/10/03)
50.	Photocopies of photographs	A. Profka #3 (3/10/03)
51.	Bieber & Associates confidential investigation information form	A. Profka #4 (3/10/03)
52.	Handwritten notes	A. Profka #5 (3/10/03)
53.	Bieber & Associates report dated 8/10/01	A. Profka #6 (3/10/03)
54.	Subpoena	S. Haines #1 (3/17/03)
55.	Subpoena	A. Giardina #1 (3/17/03)
56.	Subpoena	T. Zoshak #1 (3/17/03)
57.	Fearnot Volunteer Fire Company report dated 8/9/01 (H 142)	T. Zoshak #2 (3/17/03)
58.	Lawrence J. Dove Associates report dated 1/29/02	T. Schneiders #1 (5/30/03)
59.	Photograph	T. Schneiders #2 (5/30/03)
60.	Photograph	T. Schneiders #3 (5/30/03)
61.	Photograph	T. Schneiders #4 (5/30/03)
62.	Photograph	T. Schneiders #5 (5/30/03)
63.	Photograph	T. Schneiders #6 (5/30/03)
64.	Floor plan (H 141)	T. Schneiders #7 (5/30/03)
65.	Photograph	T. Schneiders #8 (5/30/03)
66.	Photograph	T. Schneiders #9 (5/30/03)
67.	Photograph	T. Schneiders #10

		(5/30/03)
68.	Photograph	T. Schneiders #11 (5/30/03)
69.	Photograph	T. Schneiders #12 (5/30/03)
70.	Photograph	T. Schneiders #13 (5/30/03)
71.	Photograph	T. Schneiders #14 (5/30/03)
72.	Photograph	T. Schneiders #15 (5/30/03)
73.	Photograph	T. Schneiders #16 (5/30/03)
74.	Photograph	T. Schneiders #17 (5/30/03)
75.	Photograph	T. Schneiders #18 (5/30/03)
76.	Color photocopies of photographs (#1-#56)	T. Schneiders #19 (5/30/03)
77.	Photograph	T. Schneiders #20 (5/30/03)
78.	Photograph	T. Schneiders #21 (5/30/03)
79.	Photograph	T. Schneiders #22 (5/30/03)
80.	Photograph	T. Schneiders #23 (5/30/03)
81.	Photograph	T. Schneiders #24 (5/30/03)
82.	Complete copy of Mark Allen's Crawford & Company Adjustment file	
83.	Tax returns for Thomas & Sandra Hopkins for 1999, 2000 and 2001	
84.	Photographs taken by Clifford Patton, bates stamped H0380 through H0403	

85.	Report of Clifford Patton dated June 9, 2002	
86.	June 9, 2002 letter from Clifford B. Patton to Mark Allen, bates stamped H0376-H0377.	
87.	Complete copy of Alex Profka's file	
88.	Fire Investigation report of Trooper Daniel Balliet	
89.	First General Services Estimate dated November 19, 2001	
90.	Hartford Insurance Policy # 44 RB 568147 effective 2/16/01-2/16/02	
91.	Hartford Insurance Policy # 44 RB 568868 effective 8/25/00-8/25/01	
92.	Deposition transcript of Thomas Hopkins	
93.	Deposition transcript of Sandra Hopkins	
94.	Deposition transcript of Mark Allen	
95.	Deposition transcript of Thomas Zoshak	
96.	Deposition transcript of Albert Giardina	
97.	Deposition transcript of Sharon Haines	
98.	Deposition transcript of Thomas Schneiders	
99.	Deposition transcript of Alex Profka	
100.	Report of Brad Ryden dated June 9, 2003	
101.	Report of Alex Profka (including attached documents and photographs) dated June 5, 2003	

6) NUMBER OF DAYS OF TRIAL

6 days.

7) SPECIAL COMMENTS

- a. **An insurer need only prove beyond a preponderance of the evidence that the insured was responsible for the fire which damaged the insured's property.**

While the burden of proof rests upon the insurer to show that the insured was responsible for the fire, the insurer only need prove this by a preponderance of the evidence. *Saracco v.*

Vigilant Ins. Co., 2000 U.S. Dist. Lexis 1685 (3rd Cir. 2000). Furthermore, to determine whether a reasonable inference exists that the plaintiff fraudulently burned his property, the fact finder should consider evidence of (1) an incendiary fire; (b) a motive by the insured to destroy the property; and (c) circumstantial evidence connecting the insured to the fire. *Id.* See also, *Mele v. Allstar Insurance Corp.*, 453 F.Supp. 1338, 1341 (E.D.Pa. 1978).

b. Burden of proof on insured to prove bad faith.

Under Pennsylvania law an insured must establish by clear and convincing evidence that an insurer (1) had no reasonable basis for denying benefits under the policy, and (2) it knew or recklessly disregarded its lack of a reasonable basis in denying the claim. *Terletsky v. Prudential Property & Casualty Ins. Co.*, 437 Pa.Super. 108, 112 649 A.2d 680, 688 *appeal denied*, 540 Pa. 641, 659 A.2d 560 (1994).

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